
(2004) 03 PAT CK 0011
In the Patna High Court
Case No : C.W.J.C. No. 11184 of 2003

Dr. Prakash Chandra Chaudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-03-2004

Acts Referred:

Citation : (2004) 2 PLJR 646

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard learned Counsel for the parties.

2. The Petitioner being aggrieved by the order dated 26.7.2003 contained in letter No. 2/L-93/2001 conveyed to the Petitioner under memo. No. 1542(2) has come to this Court inter alia submitting that the Respondents have illegally observed that the Petitioner would not be entitled to his full salary and would be entitled to the admissible salary/dues/leave.

3. Undisputedly the Petitioner was on leave between 1.10.1996 to 5.1.1998. On 7.1.1998 he gave his joining in Darbhanga Medical College and Hospital, his joining was not accepted and he was directed to report in the Directorate. On 17.3.1998 in accordance with the directions issued by the Superintendent, Darbhanga Medical College and Hospital under letter No. 603 dated 16.3.1998 he joined. No orders for his posting were immediately issued but final orders were issued on 22.6.2001. The Petitioner was directed to take charge in the Primary Health Centre, Banwaripur, Begusarai. He accordingly took charge on 23.6.2001. The question for consideration is that whether Petitioner would be entitled to his salary and other allowances for the period between 17.3.1998 and 22.6.2001. According to the Petitioner for none of his faults he was kept in waiting though the Respondents were duty bound and obliged to issue the posting orders but were enjoying their hibernation. According to the Petitioner the Respondents if

are at fault they can not pass orders against the interest of the Petitioner. On the other hand learned Counsel for the State submits that the Petitioner after giving his joining on 17.3.1998 absented himself and joined at Primary Health Centre, Banwaripur, Begusarai on 23.6.2001 therefore he would not be entitled to regular salary and allowances for the said period.

4. This Court asked a pointed question to the learned Counsel for the State that if the Petitioner absented himself after giving his joining on 17.3.1998 what steps were taken by the Department, to this learned Counsel for the State says that the State has not said anything about this in its counter.

5. It is to be seen that the Petitioner gave his joining on 17.3.1998, I pose a question to myself that if a person gives his joining to the Directorate on a particular day is it not incumbent upon the authorities of the Directorate to issue a posting order and if I find the answer in favour of the Petitioner that the authorities are obliged to issue the posting orders then I am unable to find any fault on the part of the Petitioner. If the authorities are not alive to the situation and are not ready to discharge their duties in accordance with law and are simply rusting a person in their Directorate then can they be allowed to say that they would not make payment of the salary and allowances because the incumbent was awaiting his posting orders. The Petitioner could not join at any other place in absence of the posting order. The Petitioner could not do anything in the Directorate unless in writing he was informed by the authorities/Directorate that he was realised to discharge a particular duty in the Directorate. Though the learned Counsel for the Respondents submits that the Petitioner was required to mark his attendance everyday but I do not find anything in writing which required him to mark his attendance in writing.

6. Taking into consideration the totality of the circumstances and that the lapses are on the part of the Respondents I am of the considered opinion that the Petitioner would be entitled to his salary and allowances for the period between 17.3.1998 and 23.6.2001. The order contained in Annexure-1 to the extent it says against the interest of the Petitioner is quashed. The Respondents are hereby directed to make payment of the dues of the salary and allowances of the Petitioner within a period of four months from the date of submission of copy of this order. The petition is allowed.